LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
OCT 21 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 462

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia,

and

ROBERT W. WARE, United States Marshal,
Petitioners,

v.

ANDRIJA ARTUKOVIC.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

LAWRENCE S. LESSER
1210 18th Street, N. W.
Washington 6, D. C.

GEORGE E. DANIELSON
417 South Hill Street
Los Angeles 13, Cal.

Counsel for Petitioners

PEHLE, LESSER, MANN, RIEMER & LUXFORD
1210 18th Street, N. W.
Washington 6, D. C.

Of Counsel

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 462

BRANKO KARADZOLE, Consul General of the Federal People's Republic of Yugoslavia,

and

ROBERT W. WARE, United States Marshal,
Petitioners,

v.

ANDRIJA ARTUKOVIC.

PETITIONERS' REPLY TO BRIEF IN OPPOSITION

I.

It is not the petitioners' contention, as respondent asserts (p. 5), that the Executive construction is that under the Treaty some "political" offenses are extraditable while others are not. The Treaty is explicit that no "political" offense is an extraditable offense. But the Treaty leaves "political" offense undefined, and "[t]here is no hard and fast line between a political and an ordinary crime * * *." *Newsletter,* Inf.

Comm. Jur., July, 1957, p. 2. Thus, in Deere, *Political Offenses in the Law and Practice of Extradition*, (1933) 27 Am. J. Int. L. 247, it is pointed out that

> * * * the conventions * * * refer to political offenses without defining the term, so that what would otherwise be a clear-cut statement of policy * * * becomes instead a matter of uncertainty and doubt because of the lack of agreement as to what constitutes a political offense.

The international and Executive construction advanced by petitioners is that "war crimes", at least those offenses described as "Crimes Against Humanity" in Article 6 of the Agreement of August 8, 1945 (Pet. pp. 9, 10), are not "political" offenses. It is irrelevant to argue as respondent does (pp. 17, 18), that "war crimes" may include offenses which are not among those listed by the Treaty as the crimes for which extradition can be had under it, for "murder", the crime here charged, is. The construction, evidenced by United States participation in multilateral international acts in concert with the sovereign parties to a host of diverse extradition treaties, is not that "war crimes" are, as such, extraditable offenses under the Treaty, but that they are not non-extraditable as "political" offenses.

II.

Respondent's reliance on the aftermath of *Ornelas* v. *Ruiz* (pp. 12, 13) is misplaced. The Executive, in the exercise of the ultimate discretion which always rests with it in such matters, refused extradition of one of the three prisoners there involved because *on the weight of the evidence* (which this Court did not consider) it concluded that the murder, arson, kidnapping and rob-

bery laid to him, were committed in the furtherance of an insurrection which he headed, and, hence, that they were "political" offenses. Here, although concededly respondent was a politician and a member of an insurrectionary regime, it does not appear, as petitioners have shown (Pet. pp. 9, 10, 47-56), that the murders charged to respondent were committed in furtherance of the insurrection to which he was a party, or in putting down some other political action to which his victims were parties, and respondent does not contend otherwise.

III.

It is an unfounded assumption that respondent makes (pp. 10, 20-21) when he argues from the premise that the United States sought without success to have included in the Treaty a provision specifically excluding from "political" offenses the murder or attempted murder of a head of government or a member of his family. This type of provision is the so-called *attentat* or *Belgian* clause. Harvard Research in International Law, Pt. 1, *Extradition*, (1935) 29 Am. J. Int. L. Supp. 114, 115; Deere, *op. cit. supra*, at 253. It had its origin not in the assassination of President Garfield in 1881, but in a law enacted by Belgium in 1856,[1] following a decision of a Belgian court that a fugitive charged with an attempt to murder Napoleon III, was a political offender, and, as such, not extraditable to France. I Oppenheimer, *International Law*

[1] Law of March 22, 1856, adding the following to Article 6 of the Law of October 1, 1833: "There shall not be considered as a political crime * * * an attack on the person of the head of a foreign government or the members of his family, when this attack takes the form of either murder, assassination or poisoning". See Harvard Research in International Law, *supra*, at 363.

(8th. ed. 1955) 709; Fenwick, *International Law* (3d ed. 1948) 336; Deere, *op. cit. supra,* at 252, 253. It is therefore not surprising that the first extradition treaty containing such a clause to which the United States was a party, should have been concluded with Belgium. Although the treaty with Belgium and similar ones may have been concluded when "the memory of the assassination of President Garfield was still fresh", IV Moore, *International Law Digest* (1906) 352, that affords no basis for saying, as respondent does (p. 20) that the United States "sponsored" the *attentat* or *Belgian* clause, and (p. 21) in the negotiation of the treaty here involved, was "unsuccessful" in getting it inserted. Respondent refers to no diplomatic correspondence or other authority for this assumption.[2] In any event, in this argument respondent assumes erroneously that "war crimes" are necessarily "political" offenses, and that petitioners contend that the United Nations and Inter-American resolutions evidence a purpose that they nevertheless be extraditable as an exception. But the resolutions and the events leading up to their adoption shows that the family of

[2] Moreover, respondent's argument proves too much. After the assassination of President Lincoln, and long before the *attentat* or *Belgian* clause appeared in any extradition treaty to which the United States was a party, the United States requested several governments, including those of Great Britain, Italy and the Papal States, to surrender his assassin if he should be found in their territories. In every case the request met with a favorable response. Indeed, in 1866, John H. Surratt, who was charged with complicity in the crime was apprehended in Egypt and was taken into American custody with the cooperation of the Egyptian authorities. IV Moore, *op. cit. supra,* at 352, 353.

nations, the United States included, considered such crimes not as "political" offenses to be treated as an exception, but as not being "political" offenses at all. Otherwise, it is reasonable to assume, the War Crimes Commission's or Yugoslavia's proposal for new treaty engagements (Pet. pp. 23, 24) would have been accepted.

IV.

Respondent's argument (pp. 23-26) that the action below is tantamount to a decision by a magistrate on the evidence after hearing, and hence not subject to review except as to jurisdiction, is patently untenable. There was no hearing; there was no evidence. The sole question was the sufficiency of the complaint in extradition. Obviously, whether a pleading is sufficient is a question of law, not of fact, even though in reaching its determination the Court must of necessity consider the factual allegations of the pleading. But that is because the sufficiency or insufficiency of a pleading depends upon the legal significance of the facts it alleges.

Here the Courts below held that the murder of every last woman, child, priest and rabbi alleged in the complaint was, *as a matter of law,* an offense of a "political" character (and, accordingly, that the complaint was insufficient) merely, it would seem, because there were so many of them or because the respondent had assumed a certain style and its trappings—to which none but Hitler and Mussolini and their minions gave any credence. Whether these were sufficient grounds

in law for the holding of the Courts below is not only a reviewable question, but should be reviewed.

Respectfully submitted,

LAWRENCE S. LESSER
1210 18th Street, N. W.
Washington 6, D. C.

GEORGE E. DANIELSON
417 South Hill Street
Los Angeles 13, Cal.

Counsel for Petitioners

PEHLE, LESSER, MANN, RIEMER & LUXFORD
1210 18th Street, N. W.
Washington 6, D. C.
Of Counsel

October 21, 1957